

Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (Text with EEA relevance)

TITLE VIII

**PROVISION OF SERVICES AND PERFORMANCE OF ACTIVITIES  
BY THIRD-COUNTRY FIRMS FOLLOWING AN EQUIVALENCE  
[<sup>F1</sup>DETERMINATION] WITH OR WITHOUT A BRANCH**

*Article 46*

**General provisions**

1 A third-country firm may provide investment services or perform investment activities with or without any ancillary services to eligible counterparties and to professional clients within [<sup>F2</sup>Part 2 of Schedule 1 to this Regulation][<sup>F3</sup>in the United Kingdom] without the establishment of a branch where it is registered in the register of third-country firms kept by [<sup>F4</sup>the FCA] in accordance with [<sup>F5</sup>Article 48 ].

2 [<sup>F6</sup>The FCA] shall register a third-country firm that has applied for the provision of investment services or performance of activities [<sup>F7</sup>in the United Kingdom] in accordance with paragraph 1 only where the following conditions are met:

- [<sup>F8</sup>a the Treasury has made a determination under Article 47(1) in respect of the third country;
- aa the firm, and the services or activities, fall within the scope of the determination;]
- b the firm is authorised in the jurisdiction where its head office is established to provide the investment services or activities to be provided in the [<sup>F9</sup>United Kingdom] and it is subject to effective supervision and enforcement ensuring a full compliance with the requirements applicable in that third country;
- c cooperation arrangements have been established pursuant to Article 47(2).
- [<sup>F10</sup>d the firm has established the necessary arrangements and procedures to provide the information required by rules made under paragraph 6B of this Article;
- e the firm has established the necessary arrangements and procedures to comply with requirements imposed under Article 48A.]

<sup>F11</sup>3 .....

4 The third-country firm referred to in paragraph 1 shall submit its application to [<sup>F12</sup>the FCA] after the [<sup>F13</sup>making of a determination by the Treasury under Article 47(1) that the legal and supervisory arrangements of the third country in which the third-country firm is authorised satisfy the requirements described in Article 47(1).]

[<sup>F14</sup>An application for registration must—

- a be made in such form and manner as the FCA may direct, and
- b contain, or be accompanied by, such information as the FCA may direct.]

The applicant third-country firm shall provide [<sup>F15</sup>the FCA] with all [<sup>F16</sup>further] information necessary for its registration. Within 30 working days of receipt of the application, [<sup>F15</sup>the FCA] shall assess whether the application is complete. If the

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application is not complete, [F15the FCA] shall set a deadline by which the applicant third-country firm is to provide additional information.

The registration decision shall be based on the conditions set out in paragraph 2.

Within 180 working days of the submission of a complete application, [F17the FCA] shall inform the applicant third-country firm in writing with a fully reasoned explanation whether the registration has been granted or refused.

F18 ...

5 Third-country firms providing services in accordance with this Article shall inform clients established in the [F19United Kingdom], before the provision of any investment services, that they are not allowed to provide services to clients other than eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU and that they are not subject to supervision in the [F19United Kingdom]. They shall indicate the name and the address of the competent authority responsible for supervision in the third country.

The information in the first subparagraph shall be provided [F20in writing, in a prominent way and in such form as the FCA may direct ].

F21 ... Where an eligible counterparty or professional client within [F22Part 2 of Schedule 1 to this Regulation] established or situated in the [F19United Kingdom] initiates at its own exclusive initiative the provision of an investment service or activity by a third-country firm, this Article does not apply to the provision of that service or activity by the third-country firm to that person including a relationship specifically related to the provision of that service or activity. An initiative by such clients shall not entitle the third-country firm to market new categories of investment product or investment service to that individual.

[F235A. For the purposes of paragraph 5, where a third-country firm or a person acting on behalf of a third-country firm solicits a person, the provision of an investment service or activity by the third-country firm to the person is not initiated at the person's own exclusive initiative.]

6 Third-country firms providing services or performing activities in accordance with this Article shall, before providing any service or performing any activity in relation to a client established in the [F24United Kingdom], offer to submit any disputes relating to those services or activities to the jurisdiction of a court or arbitral tribunal in [F25the United Kingdom].

[F266A. Third-country firms providing services or performing activities in accordance with this Article must—

- a keep the data relating to all orders and transactions in the United Kingdom in financial instruments which they have carried out, whether on own account or on behalf of a client, for a period of five years, and
- b make that data available to the FCA on request.

6B. The FCA may make rules requiring third-country firms providing services or performing activities in accordance with this Article to provide information specified in the rules to the FCA at intervals specified in the rules.]

F277 .....

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### Textual Amendments

- F2** Words in Art. 46(1) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(1)(a)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in Art. 46(1) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(1)(a)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in Art. 46(1) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(1)(a)(iii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Art. 46(1) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 10 para. 5(2)**; S.I. 2021/739, reg. 3(o)
- F6** Words in Art. 46(2) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(1)(b)(i)(aa)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in Art. 46(2) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(1)(b)(i)(bb)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Art. 46(2)(a)(aa) substituted for Art. 46(2)(a) (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 10 para. 5(3)(a)**; S.I. 2021/739, reg. 3(o)
- F9** Words in Art. 46(2)(b) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(1)(b)(iii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Art. 46(2)(d)(e) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 10 para. 5(3)(b)**; S.I. 2021/739, reg. 3(o)
- F11** Art. 46(3) omitted (31.12.2020) by virtue of The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(1)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in Art. 46(4) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(1)(d)(i)(aa)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in Art. 46(4) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 10 para. 5(5)(a)**; S.I. 2021/739, reg. 3(o)
- F14** Words in Art. 46(4) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 10 para. 5(5)(b)**; S.I. 2021/739, reg. 3(o)
- F15** Words in Art. 46(4) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(1)(d)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F16** Word in Art. 46(4) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 10 para. 5(5)(c)**; S.I. 2021/739, reg. 3(o)
- F17** Words in Art. 46(4) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(1)(d)(iii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F18** Words in Art. 46(4) omitted (31.12.2020) by virtue of The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(1)(d)(iv)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F19** Words in Art. 46(5) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(1)(e)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F20** Words in Art. 46(5) substituted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 10 para. 5(6)**; S.I. 2021/739, reg. 3(o)

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- F21** Words in Art. 46(5) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **33(1)(e)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F22** Words in Art. 46(5) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **33(1)(e)(iii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F23** Art. 46(5A) inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), **Sch. 10 para. 5(7)**; S.I. 2021/739, reg. 3(o)
- F24** Words in Art. 46(6) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **33(1)(f)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F25** Words in Art. 46(6) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **33(1)(f)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F26** Art. 46(6A)(6B) inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), **Sch. 10 para. 5(8)**; S.I. 2021/739, reg. 3(o)
- F27** Art. 46(7) omitted (1.7.2021) by virtue of [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), **Sch. 10 para. 5(9)**; S.I. 2021/739, reg. 3(o)

#### Article 47

### Equivalence [<sup>F28</sup>determination]

[<sup>F29</sup>1 The Treasury may by regulations determine that the legal and supervisory arrangements of a third country ensure all of the following—

- a that firms authorised in that third country to provide investment services or perform investment activities comply with legally binding prudential, organisational and business conduct requirements which have equivalent effect to the relevant UK requirements,
- b that such firms are subject to effective supervision and enforcement ensuring compliance with the applicable legally binding prudential, organisational and business conduct requirements, and
- c that the legal framework of that third country provides for an effective equivalent system for the recognition of investment firms authorised under third country legal regimes.

1A. For the purposes of paragraph 1(a), the relevant UK requirements are the following, as they apply on the day on which the Treasury makes the regulations—

- a the requirements set out in this Regulation;
- b the requirements set out in Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms;
- c the requirements set out in CRR rules (as defined in section 144A of FSMA);
- d the requirements set out in Part 9C rules (as defined in section 143F of FSMA);
- e the requirements set out in Directive 2013/36/EU UK law and Directive 2014/65/EU UK law.

1B. The prudential, organisational and business conduct framework of a third country may be considered to have equivalent effect where that framework fulfils all of the following conditions—

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- a firms providing investment services or performing investment activities in that third country are subject to authorisation and to effective supervision and enforcement on an on-going basis;
- b such firms are subject to sufficient capital requirements and, in particular, where they provide services or carry out the activities referred to in paragraph 3 or 6 of Part 3 of Schedule 2 to the Regulated Activities Order they are subject to comparable capital requirements to those that would apply if they were established in the United Kingdom;
- c such firms are subject to appropriate requirements applicable to shareholders and members of their management body;
- d such firms are subject to adequate business conduct and organisational requirements;
- e market transparency and integrity is ensured by preventing market abuse in the form of insider dealing and market manipulation.

1C. When making regulations under paragraph 1, the Treasury must take into account whether the third country is a high-risk third country within the meaning of regulation 33 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692).]

2 [F30The FCA] shall establish cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as effectively equivalent in accordance with paragraph 1 [F31or in retained EU law by a decision made by the Commission under paragraph 1 as it had effect in EU law before IP completion day]. Such arrangements shall specify at least:

- a the mechanism for the exchange of information between [F30the FCA] and the competent authorities of third countries concerned, including access to all information regarding the [F32non-United Kingdom] firms authorised in third countries that is requested by [F30the FCA];
- b the mechanism for prompt notification to [F30the FCA] where a third-country competent authority deems that a third-country firm that it is supervising and [F30the FCA] has registered in the register provided for in Article 48 infringes the conditions of its authorisation or other law to which it is obliged to adhere;

F33c .....

[F34d the procedures concerning the coordination of investigations and on-site inspections that the FCA considers necessary for the purposes of carrying out its functions under this Regulation, which must include a requirement for the FCA to give prior notice to the competent authority of the third country;

- e the procedures concerning the coordination of other supervisory activities;
- f the procedures concerning a request for data by the FCA under Article 46(6A)(b);
- g the mechanism for the FCA to obtain from a third-country firm providing services or performing activities in accordance with Article 46 further information in respect of the firm's operations by making a request to the competent authority of the third country concerned.]

F353 .....

4 A third-country firm may no longer use the rights under Article 46(1) where [F36the Treasury revokes regulations made] under paragraph 1 of this Article in relation to that third country.

[F375 The FCA must—

- a monitor the regulatory and supervisory developments, the enforcement practices and other relevant market developments in third countries for which determinations made

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by the Treasury in accordance with paragraph 1 are in force in order to verify that the conditions on the basis of which those determinations were made are still fulfilled, and

b provide a report of its findings to the Treasury on request.

6 In this Article, “Directive 2013/36/EU UK law” and “Directive 2014/65/EU UK law” mean the law of the United Kingdom which was relied on by the United Kingdom before IP completion day to implement Directive 2013/36/EU or Directive 2014/65/EU (as appropriate), as amended from time to time.]

#### Textual Amendments

- F28** Word in Art. 47 heading substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **33(2)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F29** Art. 47(1)-(1C) substituted for Art. 47(1) (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), **Sch. 10 para. 6(2)**; S.I. 2021/739, reg. 3(o)
- F30** Words in Art. 47(2) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **33(2)(c)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F31** Words in Art. 47(2) inserted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **33(2)(c)(iii)** (with savings in S.I. 2019/680, **reg. 11**) (as inserted by S.I. 2020/1385, regs. 1(4), **49(5)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F32** Words in Art. 47(2) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **33(2)(c)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F33** Art. 47(2)(c) omitted (1.7.2021) by virtue of [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), **Sch. 10 para. 6(3)(a)**; S.I. 2021/739, reg. 3(o)
- F34** Art. 47(2)(d)-(g) inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), **Sch. 10 para. 6(3)(b)**; S.I. 2021/739, reg. 3(o)
- F35** Art. 47(3) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **33(2)(d)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F36** Words in Art. 47(4) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **33(2)(e)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F37** Art. 47(5)(6) inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), **Sch. 10 para. 6(4)**; S.I. 2021/739, reg. 3(o)

#### Article 48

#### Register

[<sup>F38</sup>The FCA] shall keep a register of the third-country firms allowed to provide investment services or perform investment activities in [<sup>F39</sup>the United Kingdom] in accordance with Article 46. The register shall be publicly accessible on the website of [<sup>F38</sup>the FCA] and shall contain information on the services or activities which the third-country firms are permitted to provide or perform and the reference of the competent authority responsible for their supervision in the third country.

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### Textual Amendments

- F38** Words in Art. 48 substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), [33\(3\)\(a\)](#) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F39** Words in Art. 48 substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), [33\(3\)\(b\)](#) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## *f<sup>40</sup>* Article 48A

### Requirements

1 The Treasury may by regulations impose requirements on third-country firms providing investment services, or performing investment activities, in accordance with Article 46 or on a description of such firms specified in the regulations.

2 In making regulations under this Article, the Treasury must have regard to the requirements imposed on UK firms by or under this Regulation.

3 Regulations under this Article may describe requirements by reference to—

- rules made or to be made by the FCA, or
- other enactments.

4 The power under paragraph 3 includes power to make provision by reference to rules or other enactments as amended from time to time.

5 The FCA may make, amend or revoke a rule if it considers it necessary or appropriate to do so for the purposes of a requirement imposed (or varied or withdrawn) by regulations under this Article which is described by reference to a rule made or to be made by the FCA.

6 If, for the purposes of a requirement imposed (or varied or withdrawn) by regulations under this Article which is described by reference to a rule made or to be made by the FCA, the Treasury consider that it is necessary or appropriate for the FCA to make, amend or revoke a rule, they may direct the FCA to do so.

7 If the Treasury give a direction under paragraph 6, the FCA must comply with the direction within such time as the Treasury may specify in the direction.

8 The references in paragraphs 5 and 6 to the amendment or revocation of rules are to the amendment or revocation of rules made by the FCA.

9 In this Article—

“enactment” includes—

- retained direct EU legislation,
- an enactment comprised in subordinate legislation,
- an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru,
- an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and

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- (e) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act);
  - “UK firm” means—
- (a) a credit institution providing investment services or performing investment activities, or
- (b) an investment firm,
  - whose registered office or (if it has no registered office) head office is located in the United Kingdom.]

#### Textual Amendments

**F40** Art. 48A and heading inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), [Sch. 10 para. 7](#); [S.I. 2021/739](#), [reg. 3\(o\)](#)

### Article 49

#### [<sup>F41</sup>Temporary prohibitions and restrictions and withdrawal of registration]

[<sup>F42</sup>A1. The FCA may temporarily prohibit a third-country firm from providing investment services, or performing investment activities, in the United Kingdom, or place temporary restrictions on a third-country firm's provision of such services or performance of such activities in the United Kingdom, where the third-country firm—

- b has failed to comply with a request for data made by the FCA under Article 46(6A)(b) in accordance with the cooperation arrangements established under Article 47(2),
- c has failed to provide information in accordance with rules made under Article 46(6B),
- d has failed to provide information requested by the FCA in accordance with the cooperation arrangements established under Article 47(2),
- e has failed to cooperate with an investigation or on-site inspection carried out in accordance with the cooperation arrangements established under Article 47(2), or
- f has failed to comply with a requirement imposed by regulations under Article 48A.

A2. The FCA may impose more than one temporary prohibition or restriction under paragraph A1 in respect of the same failure.]

1 [<sup>F43</sup>The FCA][<sup>F44</sup>may] withdraw the registration of a third-country firm in the register established in accordance with Article 48 where:

- [<sup>F45</sup>a the FCA has well-founded reasons based on documented evidence to believe that—
  - i in the provision of investment services and the performance of investment activities in the United Kingdom, the third-country firm is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets,
  - ii in the provision of such services and activities in the United Kingdom, the third-country firm has seriously infringed a provision applicable to it in the third country and on the basis of which the Treasury made regulations under Article 47(1),



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iii in the provision of such services and activities in the United Kingdom, the third-country firm has seriously infringed a requirement imposed under Article 48A, or

iv the third-country firm is not maintaining the necessary arrangements and procedures to provide the information required by rules made under Article 46(6B) or to comply with requirements under Article 48A, and]

c [F43 the FCA] has referred the matter to the competent authority of the third country and that third-country competent authority has not taken the appropriate measures needed to protect investors and the proper functioning of the markets in the [F46 United Kingdom] or has failed to demonstrate that the third-country firm concerned complies with the requirements applicable to it in the third country; F47 ...

F47 d .....

[F48 1A. In deciding the appropriate action to take under this Article, the FCA must, among other things, take into account the nature and seriousness of the risk posed to the interests of investors and the orderly functioning of markets in the United Kingdom, having regard to—

- a the duration and frequency of the risk arising,
- b whether the risk has revealed serious or systemic weaknesses in the third-country firm's procedures,
- c whether financial crime has been occasioned or facilitated by, or is otherwise attributable to, the risk, and
- d whether the risk has arisen intentionally or negligently.

1B. The FCA must inform the competent authority of the third country in due course of its intention to take action in accordance with paragraph A1 or 1.]

2 [F49 The FCA] shall inform [F50 the Treasury] of any measure adopted in accordance with paragraph 1 without delay and shall publish its decision on its website.

3 The [F51 Treasury] shall assess whether the conditions under which [F52 regulations under Article 47(1) have been made] continue to persist in relation to the third country concerned.

[F53 4. In this Article, “documented evidence” includes, but is not limited to, information provided in accordance with rules made under Article 46(6B).]

#### Textual Amendments

- F41** Art. 49 heading substituted (1.7.2021) by [Financial Services Act 2021 \(c. 22\), s. 49\(5\), Sch. 10 para. 8\(2\)](#); S.I. 2021/739, reg. 3(o)
- F42** Art. 49(A1)(A2) inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\), s. 49\(5\), Sch. 10 para. 8\(3\)](#); S.I. 2021/739, reg. 3(o)
- F43** Words in Art. 49(1) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\), regs. 1\(3\), 33\(4\)\(a\)\(i\)](#) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F44** Word in Art. 49(1) substituted (1.7.2021) by [Financial Services Act 2021 \(c. 22\), s. 49\(5\), Sch. 10 para. 8\(4\)\(a\)](#); S.I. 2021/739, reg. 3(o)
- F45** Art. 49(1)(a) substituted for Art. 49(1)(a)(b) (1.7.2021) by [Financial Services Act 2021 \(c. 22\), s. 49\(5\), Sch. 10 para. 8\(4\)\(b\)](#); S.I. 2021/739, reg. 3(o)
- F46** Words in Art. 49(1) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\), regs. 1\(3\), 33\(4\)\(a\)\(ii\)](#) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

**Changes to legislation:** Regulation (EU) No 600/2014 of the European Parliament and of the Council, TITLE VIII is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F47** Art. 49(1)(d) and word omitted (1.7.2021) by virtue of Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 10 para. 8(4)(c)**; S.I. 2021/739, reg. 3(o)
- F48** Art. 49(1A)(1B) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 10 para. 8(5)**; S.I. 2021/739, reg. 3(o)
- F49** Words in Art. 49(2) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(4)(b)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F50** Words in Art. 49(2) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(4)(b)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F51** Word in Art. 49(3) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(4)(c)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F52** Words in Art. 49(3) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **33(4)(c)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F53** Art. 49(4) inserted (1.7.2021) by Financial Services Act 2021 (c. 22), s. 49(5), **Sch. 10 para. 8(6)**; S.I. 2021/739, reg. 3(o)

#### *<sup>F54</sup>Article 49A*

#### **Temporary prohibitions and restrictions: procedure**

- 1 A temporary prohibition or restriction under Article 49(A1) takes effect—
  - a immediately, if the notice given under paragraph 3 states that that is the case,
  - b on such date as may be specified in the notice, or
  - c if no date is specified in the notice, when the matter to which it relates is no longer open to review.
- 2 A temporary prohibition or restriction under Article 49(A1) may be expressed to take effect immediately, or on a specified date, only if the FCA, having regard to the ground on which it is taking that action, reasonably considers that it is necessary for it to take effect immediately or (as appropriate) on that date.
- 3 The FCA must give written notice to a third-country firm if—
  - a it proposes to take action in relation to the firm under Article 49(A1), or
  - b it takes action in relation to the firm under Article 49(A1) with immediate effect.
- 4 The notice must—
  - a give details of the temporary prohibition or restriction,
  - b inform the firm when the prohibition or restriction takes effect,
  - c state the FCA's reasons for taking the action and for its determination of when the prohibition or restriction takes effect,
  - d inform the firm that it may make representations to the FCA within such period as may be specified in the notice (whether or not the firm has referred the matter to the Upper Tribunal), and
  - e inform the firm of its right to refer the matter to the Upper Tribunal.
- 5 The FCA may extend the period allowed under the notice for making representations.
- 6 The FCA must give the third-country firm written notice if, having considered any representations made by the firm, the FCA decides—

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- a to impose the proposed prohibition or restriction, or
- b if the prohibition or restriction has been imposed, not to rescind it.

7 The FCA must give the third-country firm written notice if, having considered any representations made by the firm, the FCA decides—

- a not to impose the proposed prohibition or restriction,
- b to impose a different prohibition or restriction, or
- c to rescind a prohibition or restriction that has been imposed.

8 A notice under paragraph 6 must inform the third-country firm of its right to refer the matter to the Upper Tribunal.

9 A notice under paragraph 7(b) must comply with paragraph 4.

10 If a notice informs a third-country firm of its right to refer a matter to the Upper Tribunal, it must give an indication of the procedure on such a reference.

11 A third-country firm that is aggrieved by action taken by the FCA under Article 49(A1) may refer the matter to the Upper Tribunal.

12 Part 9 of FSMA (hearings and appeals) applies in relation to references to the Upper Tribunal made under this Article as it applies in relation to references made to that Tribunal under that Act.

13 For the purposes of paragraph 1(c), section 391(8) of FSMA (matters open to review) applies as if the notice under paragraph 3 were a supervisory notice (as defined in section 395 of that Act).

#### Textual Amendments

**F54** Arts. 49A-49C inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), [Sch. 10 para. 9](#); [S.I. 2021/739](#), [reg. 3\(o\)](#)

### Article 49B

#### Withdrawal of registration: procedure

1 If the FCA decides to withdraw the registration of a third-country firm in that register, it must give the firm a decision notice.

2 A temporary prohibition or restriction under Article 49(A1) may be expressed to take effect immediately, or on a specified date, only if the FCA, having regard to the ground on which it is taking that action, reasonably considers that it is necessary for it to take effect immediately or (as appropriate) on that date.

3 If the FCA gives a third-country firm a decision notice under paragraph 2, the firm may refer the matter to the Upper Tribunal.

4 Part 9 of FSMA (hearings and appeals) applies in relation to references to the Upper Tribunal made under this Article as it applies in relation to references made to that Tribunal under that Act.

5 Section 387 of FSMA (warning notices) applies in relation to a warning notice given under this Article as it applies to a warning notice given by the FCA under that Act.

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6 Section 388 of FSMA (decision notices) applies in relation to a decision notice given under this Article as it applies to a decision notice given by the FCA under that Act, but as if—

- a in subsection (1)(e)(i), for “this Act” there were substituted “ Article 49B of the markets in financial instruments regulation ”, and
- b subsection (2) were omitted.

7 Section 389 of FSMA (notices of discontinuance) applies in relation to a warning notice or decision notice given under this Article as it applies in relation to a warning notice or decision notice given by the FCA under that Act, but as if subsection (2) were omitted.

8 Section 390 of FSMA (final notices) applies in relation to a decision notice given under this Article as it applies in relation to a decision notice given by the FCA under that Act.

9 Sections 393 and 394 of FSMA (third party rights and access to FCA material) apply in relation to a warning notice or decision notice given under this Article as they apply in relation to a warning notice or decision notice given by the FCA under a provision listed in section 392 of that Act.

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**Textual Amendments**

**F54** Arts. 49A-49C inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), [Sch. 10 para. 9](#); [S.I. 2021/739](#), [reg. 3\(o\)](#)

*Article 49C*

**Notices under Articles 49A and 49B**

1 The Treasury may by regulations make provision about the procedure to be followed, or rules to be applied, in connection with the giving of notices by the FCA under Article 49A or 49B.

2 The regulations may, among other things, make provision—

- a requiring, or allowing, a notice to be sent electronically;
- b requiring, or allowing, a notice to be given in another manner;
- c as to the address to which a notice must or may be sent;
- d requiring a person to provide an address to which a notice must or may be sent;
- e for treating a notice as having been given, or as having been received, on a date or at a time determined in accordance with the regulations;
- f as to what must, or may, be done if the person to whom a notice is required to be given is not an individual;
- g as to what must, or may, be done if the intended recipient of a notice is outside the United Kingdom.

3 Section 7 of the Interpretation Act 1978 (service of notice by post) has effect in relation to notices under Article 49A or 49B subject to any provision made by regulations under this Article.]

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**Textual Amendments**

**F54** Arts. 49A-49C inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), [Sch. 10 para. 9](#); [S.I. 2021/739](#), [reg. 3\(o\)](#)

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#### Textual Amendments

- F1** Word in [Title 8](#) heading substituted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), [Sch. 10 para. 4](#); [S.I. 2021/739](#), reg. 3(o)

**Changes to legislation:**

Regulation (EU) No 600/2014 of the European Parliament and of the Council, TITLE VIII is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole legislation item and associated provisions**

- Title IVa addition by [EUR 2019/2175](#) Regulation (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Title VIa addition by [EUR 2019/2175](#) Regulation (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Sch. 3 para. 31 revoked by [2023 c. 29 Sch. 2 para. 50\(c\)\(ii\)](#)
- Sch. 3 para. 32 revoked by [2023 c. 29 Sch. 2 para. 50\(c\)\(ii\)](#)
- Art. 2.1(12)(12A) substituted by [2023 c. 29 Sch. 2 para. 8](#)
- Art. 2.1(17) words omitted by [2023 c. 29 Sch. 2 para. 19\(a\)](#)
- Art. 3(4)(5) inserted by [2023 c. 29 Sch. 2 para. 2](#)
- Art. 18-18b substituted for Art. 18 by [2023 c. 29 Sch. 2 para. 10](#)
- Art. 28a inserted by [2023 c. 29 Sch. 2 para. 17](#)
- Art. 46(2A) inserted by S.I. 2018/1403, reg. 33(1)(ba) (as inserted) by [S.I. 2019/710 reg. 16\(15\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 16(15)(a) omitted (30.9.2020) by virtue of S.I. 2020/1055, regs. 1(2), 13)
- Art. 46(2A) omitted by [2021 c. 22 Sch. 10 para. 5\(4\)](#)
- Art. 50C(2) words inserted by [2023 c. 29 Sch. 2 para. 26\(2\)](#)
- Art. 50C(3) words inserted by [2023 c. 29 Sch. 2 para. 26\(3\)](#)
- Art. 50C(4) words inserted by [2023 c. 29 Sch. 2 para. 26\(4\)](#)
- Art. 50D(1) words substituted by [2023 c. 29 Sch. 2 para. 27\(2\)\(a\)](#)
- Art. 50D(1) words substituted by [2023 c. 29 Sch. 2 para. 27\(2\)\(b\)](#)
- Art. 50D(2A) inserted by [2023 c. 29 Sch. 2 para. 27\(4\)](#)
- Art. 50D(3) words substituted by [2023 c. 29 Sch. 2 para. 27\(5\)](#)
- Art. 54a addition by [EUR 2019/2175](#) Regulation (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Art. 54b addition by [EUR 2019/2175](#) Regulation (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)